IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.7480 OF 2007

Bhikachand Mundada .. Petitioner

Versus

Shyam Gyaniram Agarwal .. Respondent

Mr.Rajesh More for petitioner

Mr.S.V.Sadavarte for respondent

CORAM : S.C.DHARMADHIKARI, J.

DATE : 3rd December 2007

P.C.

. Petition is directed against an order of the lower appellate court refusing to condone the delay while filing appeal. While it is true that delay is of 3 years, the petitioner submits that

there is explanation for the same inasmuch as consent decree was the subject matter of the proceedings. Parties were negotiating and it appeared that the negotiations failed at some point. However, this fact is disputed by the respondents and they submit that having taken benefit of the consent decree, now the petitioner wants to challenge the orders taking the terms on record and passing the decree in terms thereof.

2. In my view, considering the liberal principles that are applied and further considering the fact that the lower appellate court has gone into merits of the matter at the stage at which it was not called upon to do so, interest of justice would be sub-served if the application preferred by the petitioner is allowed, subject to petitioner paying cost quantified at Rs.20,000/- to be paid within a period of two weeks from today. If the costs are paid and proof thereof is tendered the appeal

preferred by the petitioner would be registered and decided on merits and in accordance with law, uninfluenced by the observations of the lower appellate court.

3. If costs are not tendered within the time stipulated, the order of the lower appellate court stand and thereupon the appeal shall also stand dismissed. Petition disposed of in the above terms.

(S.C.Dharmadhikari, J)